

Robert Rand

Name

23467-111

Prison Number

FCI Terminal Island

Place of Confinement

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ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
<div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 150px;"> JUN 28 2023 </div>	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

vs.

Robert Rand, Movant.

CASE NO. _____
(To be supplied by the Clerk)

MOTION PURSUANT TO
28 U.S.C. §2255 TO VACATE,
SET ASIDE OR CORRECT
SENTENCE BY A PERSON IN
FEDERAL CUSTODY

(If movant is attacking a sentence based on a federal conviction to be served in the **future**, the motion should be filed in the federal court which entered the judgment.)

- 1) Name and location of the court which entered the judgment of conviction under attack: U.S. District Court for the District of Nevada, Reno Division
- 2) Date judgment of conviction was entered: 11/21/2017
- 3) Case number: 3:16-CR-29-MMD-WGC
- 4) Length and terms of sentence: 120 months (96 months as to Count 1; 120 months as to Count 2; to be served concurrently.)
3 years of supervised release as to each count, to be served concurrently

- 5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion?
Yes ☐ No ☐
- 6) Name of the judge who imposed sentence under attack in this motion: MIRANDA M. DU, U.S. DISTRICT JUDGE
- 7) Nature of the offense involved (all counts):
Count 1: 18 USC §1112(a) Involuntary Manslaughter
Count 2: 21 USC §§841(a)(1), 841(b)(1) and (C) and 21 CFR §1306.04
Distribution of a Controlled Substance (Oxycodone)
- 8) What was your plea? **(check one)**
a) Not Guilty ☐ b) Guilty ☒ c) Nolo Contendere ☐
- 9) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: Plead guilty to Couns 1 and 2, Waiver of Appeal and Post-Conviction Proceedings (with qualifications and limitations, e.g., non-waivable claims of ineffective assistance of counsel)
- 10) If you were found guilty after a plea of not guilty, was the finding made by: **(check one)**
a) A jury ☐ b) A judge without a jury ☐
- 11) Did you testify at trial (if any)? Yes ☐ No ☐
- 12) Did you **appeal** from the judgment of conviction? Yes ☒ No ☐
- 13) If you did appeal, answer the following:
- a) State the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):
United States Court of Appeals for the Ninth Circuit, San Francisco, CA, No. 17-10510
FEB 22 2019, Affirmed
- b) State the issues raised: Whether the district court erred in denying a downward adjustment for acceptance of responsibility
Whether the government breached the plea agreement bby opposing and acceptance of responsibility adjustment
- 14) If you did not appeal, explain briefly why you did not: _____

- _____
- _____
- _____
- 15) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed in any federal court any petitions, applications or motions with respect to the judgment under attack in this motion? Yes ☐ No ☒

- 16) If your answer to question 15 was "Yes", give the following information:

- a) As to the first petition, application or motion:

1) Name of court: _____

2) Nature of proceeding: _____

3) Issues raised: _____

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

5) Result: _____

6) Date of result: _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, briefly explain why you did not:

- b) As to any second petition, application or motion, give the following information:

- 1) Name of court: _____
- 2) Nature of proceeding: _____
- 3) Issues raised: _____

- 4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐
- 5) Result: _____
- 6) Date of result: _____
- 7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

- 8) If you did not appeal, briefly explain why you did not: _____

c) As to any third petition, application or motion, give the following information:

- 1) Name of court: _____
- 2) Nature of proceeding: _____
- 3) Issues raised: _____

- ext here 4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐
- 5) Result: _____
- 6) Date of result: _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, briefly explain why you did not: _____

17) State **concisely** every ground on which you claim that you are being held unlawfully. Summarize **briefly** the **facts** supporting each ground. If necessary, you may attach up to two extra pages (8 1/2" x 11") stating additional grounds or supporting facts. You should raise in this motion all available grounds for relief which relate to the conviction under attack.

a) Ground One: Ineffective trial counsel for not telling me the correct elements of the crime and letting me plead guilty without understanding the nature of the offense

1) Supporting facts (tell your story briefly without citing legal authority or argument):

After I plead guilty, the Supreme Court issued its opinion in *Ruan v. United States*, 142 S. Ct. 2370 (2022), holding that in prosecutions of DEA-registered physicians under the Controlled Substances Act, the government is required to prove that the defendant knew or intended that his or her conduct was unauthorized. My attorney never told me that the government would have to prove that I knew I wasn't authorized to write the prescriptions I was charged for, but let me plead guilty anyway. If I knew the actual elements the government was required to prove, I would not have plead guilty.

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion or application?
Yes ☐ No ☒

a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: _____

-
- b) If your answer is "No", state briefly your reason(s) for not presenting this ground: _____
Did not know what the right law was before _____
-

- b) Ground Two: _____
The plea agreement colloquy did not tell me the correct elements of the offense _____
-

- 1) Supporting facts (tell your story briefly without citing legal authority or argument):

My conviction was based on me admitting that I distributed oxycodone not for a legitimate medical purpose and outside the usual course of professional practice. I am now aware that to be guilty of the offense, I had to know the prescriptions I wrote were not authorized when I issued them. This element was not mentioned in my plea agreement, and the judge never told me that element was required during the plea hearing. I always believed that I was authorized to write the prescriptions, so I should not have been convicted.

- 2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application?

Yes ☐ No ☒

- a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: _____

- b) If your answer is "No", state briefly your reason(s) for not presenting this ground: I did not know the correct elements until recently _____
-

- c) Ground Three: I was convicted for violating the regulation, not the statute _____
-

- 1) Supporting facts (tell your story briefly without citing legal authority or argument):

My plea agreement uses elements from the regulation in describing the elements, and it does not mention the statutory requirement of authorization. The plea agreement even lists the regulation with the statutory provisions in under the Title & Section of the offense. But only Congress can say what a crime is, and congress never said regulations can change what is required for conviction.

- 2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes ☐ No ☒

- a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: _____

- b) If your answer is "No", state briefly your reason(s) for not presenting this ground: _____
My lawyer told me the regulation was all that's required for conviction

- d) Ground Four: _____

- 1) Supporting facts (tell your story briefly without citing legal authority or argument):

- 2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes ☐ No ☐
- a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: _____
- b) If your answer is "No", state briefly your reason(s) for not presenting this ground: _____
- 18) Do you have any petition, application, motion or appeal now pending in any court regarding the conviction under attack? Yes ☐ No ☒ If "Yes", state the name of the court and the nature of the proceeding: _____
- 19) Were you represented by an attorney at any time during the course of your arraignment and plea, trial (if any), sentencing, appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which you filed with respect to this conviction? Yes ☒ No ☐ If "Yes", state the name(s) and address (es) of any such attorney(s), the proceedings in which you were so represented and whether said attorney(s) was/were of your own choosing or if appointed by the court: Jack M Fox Law Offices of Jack M. Fox 317 S. Arlington Ave. Reno, NV 89501
John Ohlson 6140 Plumas St., Suite 200, Reno, NV 89519
Appeal Justin James Bustos, Dickinson Wright, PLLC, 100 W Liberty Street, Suite 940, Reno, NV 89501

Wherefore, movant prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Signature of Movant

(Attorney's full address and telephone
number.)

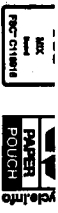
DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the movant in the above action, that he has read the above pleading and that the information contained therein is true and correct.

28 U.S.C. § 1746. 18 U.S.C. § 1621.

Executed at Chicago on 6/27, 2023
(Location) (Date)

Robert Hand
(Signature)



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